

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PEDRO HERNANDEZ,
Petitioner,

No. C 05-02093 MHP

v.

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

JEANNE WOODFORD, Director of the
California Department of Corrections,
Respondent.

This matter has been forwarded to this court to determine whether a certificate of appealability should issue. A certificate of appealability will not issue because petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The first basis for denial of the petition was that the claim rested on independent and adequate state grounds. The second claim, ineffective assistance of counsel, was premised on two theories neither of which is supported by evidence in the record or the applicable law as explained in this court's order filed May 19, 2011, Dkt. #34. This is not a case in which "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Therefore, IT IS HEREBY ORDERED that a certificate of appealability is DENIED,

DATED: June 20 2011


Marilyn Hall Patel
United States District Judge